

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CLAXTON WILLIAMS, JR., individually and on behalf of similarly situated,

Plaintiff,

v.

TERRY L. MCCANN, ALAN UCHTMAN, ROGER E. WALKER, ROD R. BLAGOJEVICH, WILLARD O. ELYEA, PARTH GHOSH, FAISAL AHMED, and WEXFORD HEALTH SOURCE, INC., ELI MICHAEL, JIMMY DOMINGUEZ,

Defendants.

Law No.: 06-C-7067

Hon. James B. Zagel

MOTION FOR ENTRY OF JUDGMENT
UNDER RULE 58(d)

NOW COME Defendants, PARTHASARATHI GHOSH, M.D., FAISAL AHMED, M.D., and WEXFORD HEALTH SOURCES, INC. ("Wexford Health"), by and through their attorneys, HEYL, ROYSTER, VOELKER & ALLEN, and for their Motion for Entry of Judgment Under Rule 58(d), state as follows:

1. On June 28, 2011, this Court dismissed the case with prejudice for failure to state a claim, failure to exhaust administrative remedies, untimeliness, and improper joinder of unrelated claims (Doc. 199, attached to this motion as Exhibit A).

2. Rule 58 requires that every judgment be set out in a separate document F.R.C.P. 58(a). This Court neglected to enter a separate judgment under Rule 58.

3. Plaintiff filed a Notice of Appeal on August 1, 2011 (Doc. 200).

4. Federal Rule of Appellate Procedure 4 provides that a notice of appeal must be filed “within 30 days after judgment or order appealed from is entered. F.R.A.P. 4(a)(1)(A).

5. A judgment or order is “entered” for purposes of Rule 4(a) when the separate document required under Rule 58(a)(1) is entered on the court’s docket, pursuant to Federal Rule of Civil Procedure 79(a). F.R.A.P. (a)(7)(A); F.R.C.P. 79(a).

6. As a result of this Clerk’s inadvertent failure to enter a Rule 58 judgment, Plaintiff’s notice of appeal has been rendered premature. A notice of appeal filed after the court announces a decision or order, but before the entry of the judgment or order, is treated as filed on the date of and after the entry. F.R.A.P. (a)(2). Accordingly, should this Court enter its Rule 58 judgment, Plaintiff’s Notice of appeal will become effective and the case may proceed toward a final resolution.

WHEREFORE, Defendants, PARTHASARATHI GHOSH, M.D., FAISAL AHMED, M.D., and WEXFORD HEALTH SOURCES, INC., respectfully pray that this Court enter judgment in accordance with Federal Rule of Civil Procedure 58(a) so that the case may proceed.

PARTHASARATHI GHOSH, M.D.,
FAISAL AHMED, M.D., and
WEXFORD HEALTH SOURCES, INC.

BY: s/Craig L. Unrath
HEYL, ROYSTER, VOELKER & ALLEN
Craig L. Unrath
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PROOF OF SERVICE

I hereby certify that on January 23, 2012, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system which will send notification of such filing to the following:

Mr. Eric Truett
Illinois Attorney General's Office
100 West Randolph Street
Chicago, IL 60601

In addition, the undersigned certifies that a copy of the foregoing instrument was served upon the following by enclosing the same in an envelope addressed to such person at their business address as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Box in Peoria, Illinois, on the 23rd day of January, 2012.

Claxton H. Williams, Jr.
Menard Correctional Center
P.O. Box 1000
Menard, IL 62259

/s/ Craig L. Unrath

CLU/dmm

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